

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2576

SPONSOR: Senator Sebesta

SUBJECT: Roads Presumed to be Public Highways

DATE: March 18, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Favorable
2.	_____	_____	CU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill exempts public utilities from governments' presumed ownership of right-of-way under specific circumstances.

This bill substantially amends section 95.361 of the Florida Statutes.

II. Present Situation:

Section 95.361(1), F.S., provides roads are presumed to be dedicated to the public when a road has been constructed by a governmental entity and if maintained or repaired continuously and uninterrupted for 4 years by a county, municipality, or the Florida Department of Transportation (FDOT).

Section 95.361(2), F.S., provides roads are presumed to be dedicated to the public when a road has been constructed by a nongovernmental entity, or when a road was not constructed by the entity currently maintaining or repairing it, or when it cannot be determined who constructed the road, and when such road has been regularly maintained or repaired for the immediate past 7 years by a county, municipality, or the FDOT.

Section 95.361(3), F.S., provides a map certified and filed in the office of the clerk of the circuit court in the county where the road is located showing the lands and reciting the road is vested in the state is evidence of ownership of the land by the state, county, or municipality, as the case may be.

Section 95.361(4), F.S., provides any person claiming an interest in the property affected by s. 95.361(2), F.S., may file an equitable or legal action to cause cessation of the maintenance or

occupation by the governmental authority. Electric utilities have expressed concerns about the impact of s. 95.361(4), F.S., which intended to clear title in cases where ownership of a road was in question.

III. Effect of Proposed Changes:

The bill amends s. 95.361, F.S., to create an exemption for public utilities from presumed public road dedications.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives of electric utilities have stated, under their interpretation of s. 95.361, F.S, utilities owners would be forced to pay the entire relocation costs if governmental entities claimed ownership of a road, based upon dedication under this section. In addition, utility companies have expressed concerns the companies will incur significant legal costs to defend their property interests.

C. Government Sector Impact:

According to the FDOT, on rare occasions, FDOT assumes road right-of-way via maintenance. In such a rare instance, FDOT could be required to incur expenses to relocate utility facilities. The FDOT expects such a possibility is remote, resulting in an indeterminable and insignificant negative fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
